STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
LAWRENCE S. MOBO,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2006SF3229
	)	EEOC NO(S): 21BA61898
and	)	ALS NO(S): S07-377
	)	
WAL-MART #1734,	)	
	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 16th day of June 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS

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RECOMMENDED ORDER AND DECISION

This matter comes to me on a motion by Respondent for issuance of a summary decision. On May 19, 2009, an Order was entered, which gave Complainant until July 20, 2009 to file a response to the instant motion for summary decision. However, Complainant has not filed a response to the instant motion and has not filed any motion for an extension of time to file same.

Contention of the Parties

In the instant Complaint, Complaint contends that he was terminated from his Associate position on account of his race (Black) and national origin (Nigerian). In the instant motion for summary decision, Respondent contends that Complainant was terminated for workplace infractions that were unrelated to Complainant's race or national origin.

Findings of Fact

Based on the record in this case, which includes the unrebutted affidavit contained in the instant motion for summary decision, as well as admissions made by Complainant in Respondent's Requests to Admit Facts, I make the following findings of fact:

1. On January 5, 2001, Respondent hired Complainant as an Electronics Associate in its Champaign, Illinois store. Shortly after his hire, Complainant received a copy of

Respondent's Associate Handbook, which contained, among other things, Respondent's "Coaching for Improvement Policy."

2. At all times pertinent to the instant case, Respondent's "Coaching for Improvement" policy imposed discipline in three progressive steps. The first step consisted of a verbal coaching to notify an employee that his or her conduct did not meet Respondent's job performance expectations. The second step of discipline was a written coaching, which requires an acknowledgement by the employee of the workplace infraction and also requires the employee to complete an action plan to correct the infraction. The third step of the disciplinary policy was a "Decision-Making Day" coaching, which was the final step prior to termination.

3. At all times pertinent to the instant case, an employee receiving a "Decision-Making Day" coaching required that the employee formally acknowledge the coaching and complete an acceptable action plan. Respondent's policy specifically stated that any refusal "to write an acceptable plan of action and acknowledge the expected behavior" would result in an advancement of discipline up to and including termination.

4. At all times pertinent to the instant Complaint, Respondent had a "Breaks, Meal Periods, and Days of Rest Policy" that called for break periods to be 15 minutes in length and meal periods to be from 30 to 60 minutes in length.

5. On October 17, 2004, Complainant received a verbal coaching pursuant to Respondent's "Coaching for Improvement" policy due to Complainant's failure to take his meal break in a timely manner.

6. On December 30, 2004, Complainant received a written coaching pursuant to Respondent's "Coaching for Improvement" policy because Complainant was 20 minutes late in returning from his meal break. At this time, Complainant acknowledged receipt of his written coaching and the coaching acknowledged that Complainant had completed the required action plan.

7. On January 4, 2006, Associate Michael Enloe, a Caucasian, received a Decision-Making Day coaching that stemmed from a supervisor's observation that Enloe had five unapproved absences and eight unapproved tardies since October 27, 2005. Enloe completed his action plan, promised to be at the store when scheduled and acknowledged the fact that he was being coached about his conduct.

8. On January 14, 2006, Rebecca Smith, who at all times pertinent to the instant Complaint was an Co-Manager at Respondent's Champaign store, issued Complainant a Decision-Making Day coaching, after she witnessed Complainant clocking in after his meal break, but returning to the break room for 17 minutes instead of going to his assigned post.

9. Immediately after the issuance of his Decision-Making Day coaching, Complainant refused to draft an action plan or acknowledge his Decision-Making Day Coaching, as required under Respondent's Coaching for Improvement Policy.

10. At some point after January 14, 2006, Smith reminded Complainant of his obligation to acknowledge his Decision-Making Day Coaching and to draft his action plan and warned Complainant that his continued failure to do so would cause him to be terminated.

11. Complainant failed to acknowledge his Decision-Making Day Coaching and/or draft his action plan in spite of Smith's warning.

12. On January 17, 2006, Complainant was terminated for failure to follow Respondent's "Coaching for Improvement" policy.

13. For the time period from January 21, 2006 to March 13, 2006, four Caucasian Associates from Respondent's Champaign, Illinois store were terminated on the stated ground of misconduct with coachings.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Respondent has articulated a legitimate, non-discriminatory reason for its decision to terminate Complainant as an Associate in its Champaign, Illinois store.

4. Complainant has failed to present any evidence that the reason given by Respondent for its decision to terminate him was a pretext for discrimination based on Complainant's race or national origin.

Determination

Respondent's motion for issuance of a summary decision should be granted since Complainant failed to present any evidence to challenge Respondent's explanation that he was terminated for failure to abide by its "Coaching for Improvement" policy.

Discussion

As with all motions for summary decision pending before the Commission, a motion for summary decision shall be granted if the record indicates that there is no genuine issue as to any material fact, and the moving party is entitled to a recommended order as a matter of law. (See, section 8-106.1 of the Human Rights Act (775 ILCS 5/8-106.1), and *Bolias and Millard Maintenance Service Company*, 41 Ill. HRC Rep. 3 (1988).) Moreover, in determining whether there is any genuine issue of material fact, the record is construed most strictly against the moving party and most liberally in favor of the opponent. (See, for example, *Armagast v. Medici Gallery and Coffee House*, 47 Ill.App.3d 892, 365 N.E.2d 446, 8 Ill. Dec 208 (1st Dist, 5th Div 1977).) Inasmuch as a summary order is a drastic method for disposing of cases, it should only be allowed when the right of the moving party is clear and free from doubt. (See, *Susmano v. Associated Internists of Chicago*, 97 Ill.App.3d 215, 422 N.E.2d 879, 52 Ill. Dec 670 (1st Dist 1981).) Furthermore, although there is no requirement that Complainant prove her case to overcome the motion, Complainant is still required to present some factual basis that would

arguably entitle her to a judgment under the applicable law. See, *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill. Dec 802 (1st Dist, 2nd Div 1980).

In its motion for issuance of a summary decision, Respondent argues that the undisputed evidence, through Complainant's admissions contained in Respondent's Request to Admit Facts and the unrebutted allegations contained in Rebecca Smith's affidavit attached to the instant motion, indicate that Complainant will be unable to establish a *prima facie* case of discrimination based on his race or national origin, and that he will be unable to present evidence to dispute Respondent's explanation that it terminated Complainant because he had failed to comply with certain requirements set forth in Respondent's "Coaching for Improvement" policy. A review of the record certainly supports Respondent's argument in this regard since it shows that: (1) from October of 2004 to January of 2006, Complainant was cited for various attendance infractions; (2) Complainant initially received a verbal coaching and then a written coaching, pursuant to and consistent with Respondent's progressive disciplinary policy; (3) a store supervisor issued Complainant a Decision-Making Day coaching after witnessing Complainant clock in after a break, but going to the break room for a period of time instead to going to his assigned post; (4) Complainant was terminated after refusing to draft an action plan or acknowledge the coaching for the improper clock-in incident; and (5) termination for an employee's failure to acknowledge the coaching or draft an acceptable action plan was consistent with Respondent's "Coaching for Improvement" policy.

So where was the discrimination in this case? There is nothing in this record to indicate that Respondent tolerated employees of any race or national origin to refuse to draft an action plan or refuse to acknowledge expected future behavior once they had received a Decision-Making Day coaching. True enough, Complainant alleged in his Complaint that an Associate by the name of Mike Enloe was not discharged under similar circumstances. However, a close examination of Enloe's disciplinary history indicates that although he received a Decision-Making Day coaching for unacceptable absenteeism, Enloe drafted an action plan and

acknowledged his Decision-Making Day coaching. Thus, Enloe cannot be a suitable comparative for purposes of this discrimination claim where Complainant did not draft an action plan or acknowledge the coaching. Moreover, Respondent provided evidence that Complainant was treated similarly to four Caucasian Associates who were terminated during the same time frame as Complainant for misconduct associated with their coachings.

As such, I find that Complainant cannot establish a *prima facie* case of discrimination where he has failed to present any evidence that similarly situated co-workers outside his protected classifications were treated more favorably. In a similar fashion, I find that Complainant has not presented any evidence that Respondent's proffered explanation for his termination was a pretext for either race discrimination or discrimination based on his national origin where there has been no showing in the instant record that Respondent either tolerated individuals who clocked in, but failed to report to their assigned post, or who failed to comply with the Decision-Making Day coaching requirements set forth in its Coaching for Improvement policy. Therefore, I find that Respondent is entitled to issuance of a summary decision as a matter of law where Complainant cannot establish a *prima facie* case of discrimination and has put forth no evidence that the reason set forth by Respondent for his termination is a pretext for either race discrimination or discrimination based on Complainant's national origin.

Recommendation

For all of the above reasons, it is recommended that Respondent's motion for issuance of a summary decision by granted, and that the instant Complaint and the underlying Charge of Discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 4TH DAY OF AUGUST, 2010